

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

CANDY LAB, INC.,
a Nevada Corporation,

Plaintiff,

Case No. 17-CV-00569-JPS

v.

MILWAUKEE COUNTY, a municipal
corporation; MILWAUKEE COUNTY
BOARD OF SUPERVISORS; and
MILWAUKEE COUNTY DEPARTMENT
OF PARKS, RECREATION, AND
CULTURE,

Defendants.

**DECLARATION OF MADISON K. BENEDICT IN SUPPORT OF
DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

MADISON K. BENEDICT, declares pursuant to 28 U.S.C. § 1746 and under penalty of perjury that the following is true and correct:

1. I am an attorney with Husch Blackwell LLP and I am located in my firm's Austin, Texas office.
2. I make this declaration based upon my personal knowledge of the facts attested to herein.
3. On Monday, May 22, 2017, I downloaded the mobile application "Texas Rope 'Em" (hereinafter referred to as the "Game") on my iPhone.
4. On Monday, May 22, 2017 and Tuesday, May 23, 2017, I played the Game in Austin, Texas on my iPhone.

5. Upon opening the Game for the first time, I was asked to create an account consisting of an email address and password. A copy of that screenshot is attached hereto and incorporated herein as **Exhibit 1**.

6. After creating an account and clicking “Cards” on the home screen (a copy of that screenshot is attached hereto and incorporated herein as **Exhibit 2**), I was shown two random playing cards, which represented my hand, and five concealed playing cards, which represented the computer-controlled dealer’s “House Hand” (hereinafter referred to as the “dealer’s hand”). A copy of that screenshot is attached hereto and incorporated herein as **Exhibit 3**.

7. My hand and the dealer’s hand were shown on a plain brown background that resembled a wooden table.

8. To complete my hand, I had to physically visit pre-programmed locations to acquire three more randomly generated playing cards.

9. The sole goal of the Game is to collect a hand of playing cards that will beat the dealer’s hand under the traditional rules of poker.

10. The Game does not provide any fictional backstory that would incentivize me to win in order to gain access to different parts of the Game, unlock certain advantages that would provide an upper hand in beating the dealer, proceed further in some fictional world, or learn additional facts about Game characters that could assist in winning.

11. After clicking “Map” from the home page of the Game, I was shown a two-dimensional map identifying my current location and icons (“card icons”) identifying locations at which I could find the additional playing cards to complete my hand. A copy of that screenshot is attached hereto and incorporated herein as **Exhibit 4**.

12. The Game provides a map of Austin that is virtually identical to maps of Austin accessible on other phone applications such as Google Maps, Apple Maps, or others intended for personal navigational uses.

13. The Game tracked my location in a manner similar to how these other map applications track location and provided the locations of local businesses.

14. Other than the card icons identifying the locations where I could find the needed playing cards, there are no other Game-related details added to the map intended to augment the feeling or experience of playing a simulated game.

15. Upon arriving in the general vicinity of a designated location (a “game stop”), I pressed a button to allow the Game to access my iPhone’s camera.

16. Thereafter, the map disappeared from the screen and was replaced with real-time images of the area, just as if I had routinely accessed my iPhone’s camera to take a picture of my surroundings.

17. I pointed my iPhone around the game stop until an image appeared that was identical to the card icon shown on the map.

18. After clicking on the image, I was able to select additional cards for my hand by choosing from those randomly displayed.

19. Once I had visited various locations and obtained five cards total, I was able to “play” my hand against the dealer’s hand by returning to the “Cards” screen accessible from the home page.

20. The dealer is not a digital character, nor is there any depiction on any screen of an individual, animal, or other life form, whether realistic or otherwise; rather, the dealer is represented by a box that automatically generates a competing hand.

21. Whether I won or lost, I was able to tap a button and restart the process of being dealt two initial cards, visiting locations to gather more cards, and playing a new hand against the dealer's hand again. A copy of that screenshot is attached hereto and incorporated herein as **Exhibit 5**.

22. After playing my hand against the dealer's hand, there was no option to post results to social media.

23. The digital content of the actual Game is limited to images of playing cards and the designated geolocations on a two-dimensional map display.

24. From the home screen, there is also a button which directs you to various screens explaining the rules of the game. A copy of those screenshots are attached hereto and incorporated herein as **Group Exhibit 6**.

25. The digital content of this explanatory section is like the rest of the Game in that the images are simplistic and undetailed.

Dated this 31st day of May, 2017.

s/ Madison K. Benedict

Madison K. Benedict



TEXAS ROPE'EM

Sign in



Email



Password



Remember Me

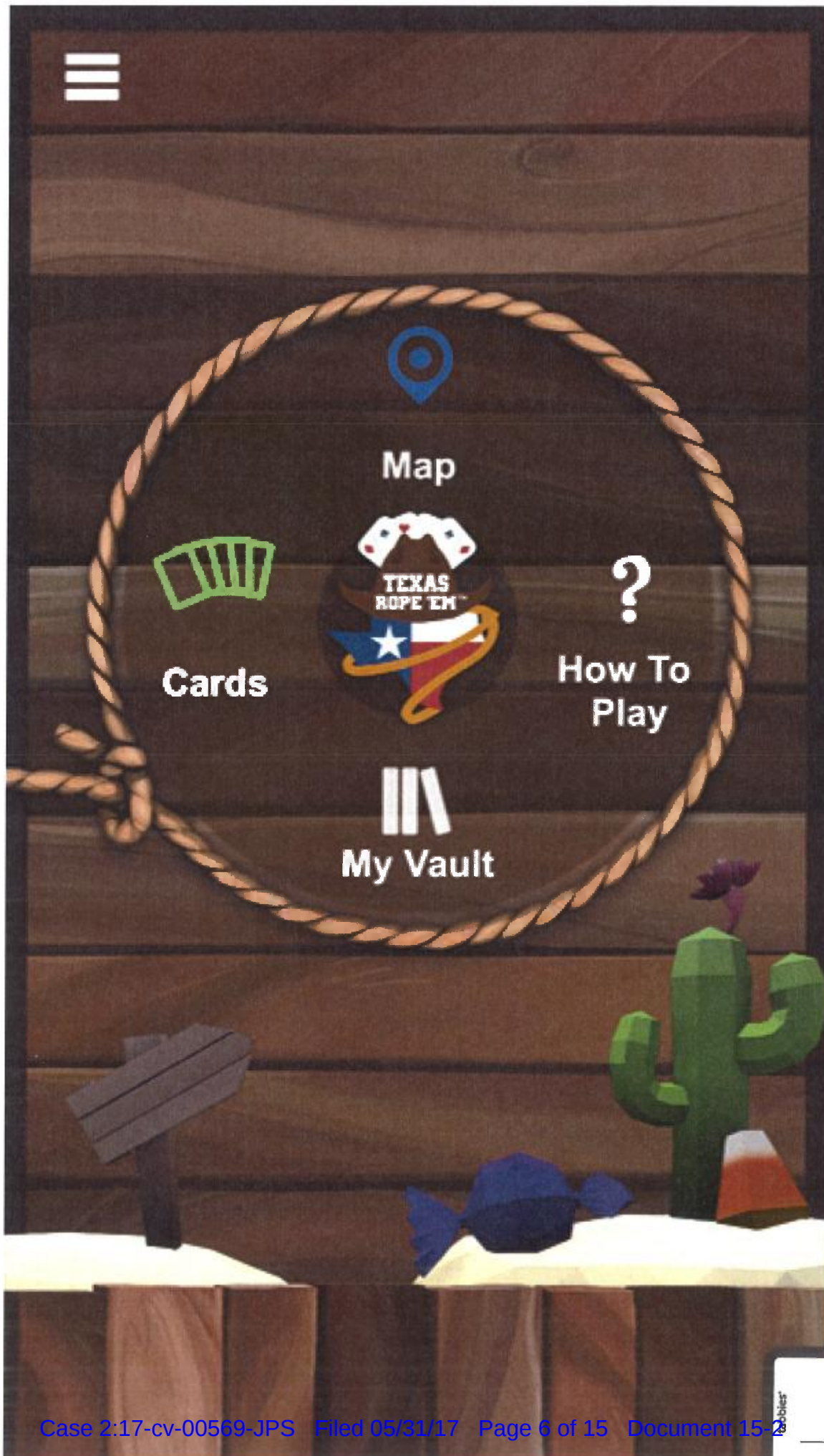
Log In

[Register](#)

[Forgot Password](#)

EXHIBIT

1





House Hand

Find more cards
to finish your hand

6 draws left

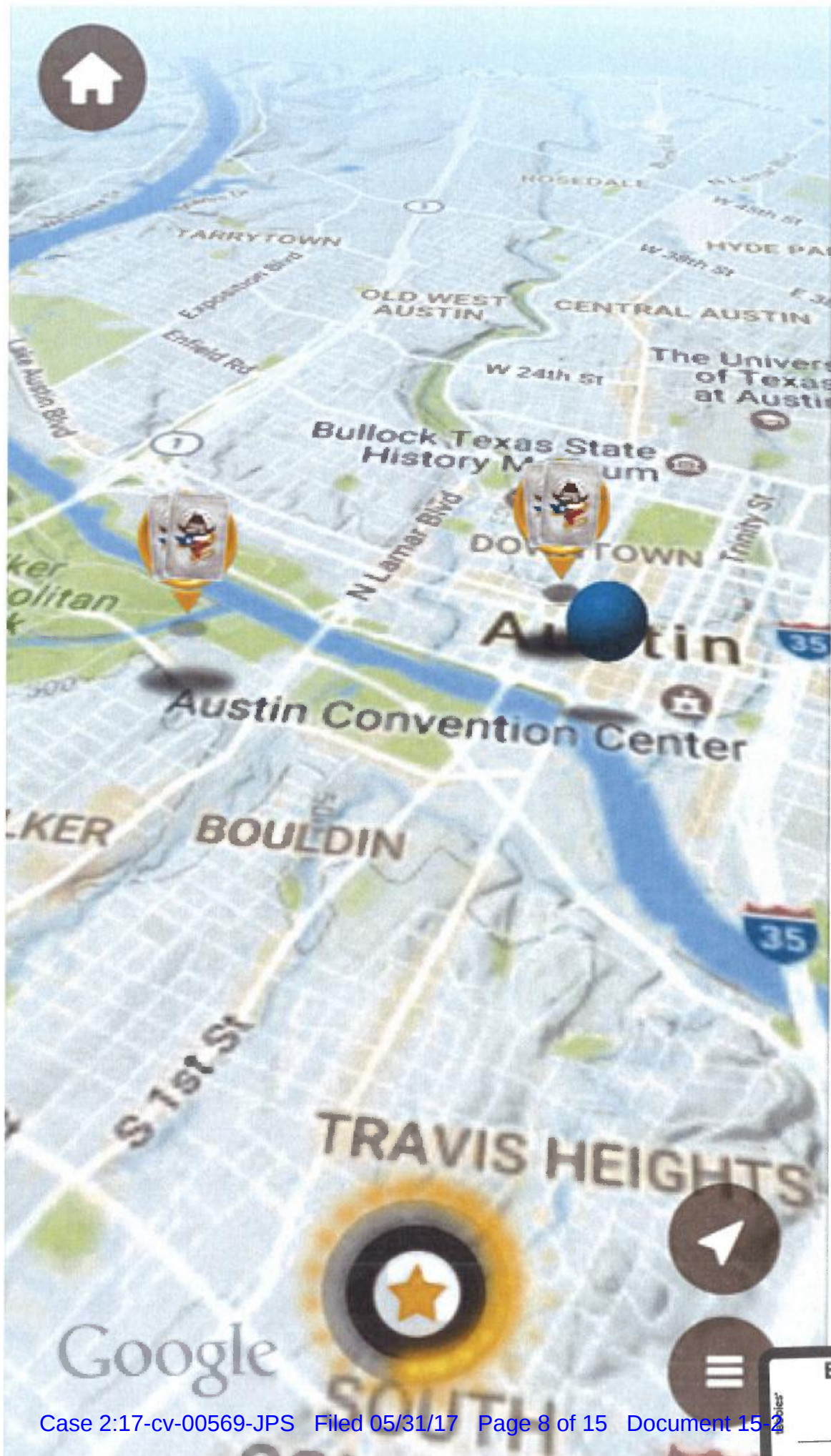
Your Hand

Pair



EXHIBIT

3





House Hand

Pair

You Win!

Tap to play again



Your Hand

Pair





Use the Cards view to examine your cards.
You start with 2.





Use the **Map** view to locate more cards.





When you get close to a draw spot,
switch to the **Camera View** and touch
the spot to draw cards.





**Each time you use a new draw spot,
you'll get a choice of 2 cards to add to
your hand.**

**If you go over 5 cards, you'll have to
discard to make room.**





Royal Flush

A-K-Q-J-10
in the same suit



Straight Flush

Consecutive ranks
in the same suit



Four of a Kind

Four cards of same rank



Full House

Three cards of one rank
and cards two of another



Flush

Five cards in the same
suit



Straight

Five consecutive ranks



Three of a Kind

Three cards of same
rank



Two Pair

Two cards of one rank
and two cards of another



Pair

Two cards of one rank



High Card

Anything else



**Any time after you have 5 cards, you
can play against the dealer.**

Play

